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September 27, 2004

Comments  
Industrial Stormwater General Permit  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

**RE: Comments on Proposed Modifications to Industrial Stormwater General Permit**

The Northwest Food Processors Association (NWFP) appreciates the opportunity to comment on the Department of Ecology's Proposed Modifications to the Industrial Stormwater General Permit. NWFP is a regional trade association that represents food processors in Washington, Idaho and Oregon. Food processors in the state of Washington represent a significant portion of the state's economy, adding nearly \$3 billion of direct value to the economy and employing over 30,000 people statewide.

NWFP has serious concerns about a number of the proposed changes in the Modifications to the Industrial Stormwater General Permit. We understand the need to make changes to the current permit and are committed to protecting the quality of Washington's waterways. However, we do not believe that this rule package, as written will achieve the intended goals.

We propose the following changes to the draft rule:

**1. Allow Permittees a Phase In Period for New Requirements**

Many current permittees are not aware, or have just recently been notified, that they discharge into receiving waters with a TMDL. The provisions of the proposed permit would require immediate compliance for facilities that have not had an opportunity to evaluate the specific parameters of its discharge and develop a strategy for controlling or treating any discharge that may not meet the new standard.

It is standard practice in any discharge permit process to allow dischargers an opportunity to evaluate and plan for the implementation of new discharge requirements. We propose

that Ecology use the next five year permit cycle as a transition period to allow dischargers that are facing new requirements to implement control technologies, as the rule does for discharges into 303 (d) waters.

If this is not done, the potential for enforcement actions and third party lawsuits will be great. This will take the focus away from compliance actions and will ultimately delay improvements in the quality of stormwater discharges. It is in the State of Washington's best interests to ensure higher quality discharges and avoid a further blizzard of litigation.

## 2. **Current Sampling Requirements Should Not Be Revised**

The sampling requirements in the proposal will not result in a better stormwater program. The current sampling program, which complies with EPA guidelines, will produce data that is of high quality and will ensure that receiving waters are being protected.

Additionally, we object to Ecology placing the sampling requirements in the permit and calling it guidance. This will, by default, make it an enforceable requirement of the permit.

We also ask Ecology to reconsider the 0.1" rain event sampling requirement. This is a very small rain event and will make compliance exceedingly difficult and costly. The benefit of this requirement is heavily outweighed by the cost and difficulty of compliance. It needs to be changed.

Requiring that samples be submitted that do not meet the criteria for sampling is also a very bad idea. It will create a database that is full of faulty and misleading information. This provision needs to be eliminated.

In short, we strongly believe that the current sampling requirements are adequate to ensure high quality data and compliance with the permit. They should not be modified.

## 3. **Action Levels and Response Requirements Need Further Development Prior to Implementation**

We are concerned that the action levels set in the proposal are based on surrogate data, and not on actual data from Washington stormwater discharges. A case in point are the metals action levels which are derived from a California highway discharge study. If action levels are to be implemented, they need to be developed and validated over the course of the next permit cycle and implemented in the next industrial general permit. Valid data is essential if the State is going to require extensive investment by permittees to comply.

We believe the requirement to comply with the action levels and Response Levels 2 and 3 circumvent the intent of Senate Bill 6415. We believe that the Level 1 response is appropriate and should be included in the new permit.

## 4. **Eliminate Permittee Requirement to Produce Data**

A stormwater permit is a legal agreement between a private entity and a public agency. All dischargers are required by law to comply with the terms of the permit, however,

public disclosure laws are not binding on, nor intended to apply to private entities. Private companies, for instance, are not required to hold open public meetings. The requirement to produce documents for members of the public is a requirement that rests on the shoulders of the State of Washington, not the regulated entities. The State must make these documents available to the public and should not, as a matter of public policy, seek to delegate that responsibility to regulated entities.

NWFPA appreciates the opportunity to comment on this proposal and looks forward to working with the Department of Ecology to make the stormwater program successful and efficient. If you have questions or need more information, please call me at 503-371-3123.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Smith", is written over a rectangular area of the document.

Craig Smith  
Environmental Consultant

cc: NWFPA Environmental Affairs Committee